

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS NUMBER: 94-0614 RST

Sales and Use Tax

For The Periods: 1990 Through 1991

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ISSUES

I. Sales and Use Tax - Claim for Refund

Authority: IC 6-8.1-9-1

The taxpayer seeks a refund for overpayment of taxes for 1991 and 1992.

STATEMENT OF FACTS

The taxpayer is a partnership engaged in the manufacture of rubber molded products. The Department conducted a sales and use tax audit on the taxpayer for the years 1990 and 1991. The taxpayer protested the finding in the original audit and filed a Claim for Refund on several items. The auditor reduced the audit assessment to zero but disallowed a refund because the statute of limitations had already expired for the years at issue. The taxpayer protested this and requested a hearing on the matter.

I. Sales/Use Tax - Claim for Refund

DISCUSSION

The taxpayer asserts that it is entitled to a refund pursuant to IC 6-8.1-9-2 (a), which reads:

If the department finds that person has paid more tax for a taxable year than is legally due, the department shall apply the amount of the excess against any amount of that same tax that is assessed and is currently due. The department may then apply any remaining excess against any of the listed taxes that have been assessed against the person and that are currently due. If any excess remains after the department has applied the overpayment against the person's tax liabilities, the department shall either refund the amount to the person or, at the person's request, credit the amount to the person's future tax liabilities.

The Department follows the procedure outlined in IC 6-8.1-9-1(a) for the filing of Claims for Refund:

If a person has paid more tax than he determines is legally due for a particular taxable period, he may file a claim for refund with the department. In order to obtain the refund, the person must file the claim with the department within three (3) years after the latter of the following:

- (1) the due date of the return;
- (2) the date of payment; or
- (3) in the case of a return filed for the state gross retail or use tax [t]he end of the calendar year which contains the taxable period for which the return is filed.

The two sections of the statute are not in conflict, as the two interpretations would indicate. The purpose of the first section of the statute (IC 6-8.1-9-1) is to outline how the Statute of Limitations applies in regard to a refund.

Once the criteria for the Statute of Limitations has been met for an otherwise valid refund claim, then the procedure for the credit or refund is outlined in section two (IC 6-8.1-9-2). The taxpayer is incorrect to interpret that it is entitled to a refund pursuant to the second section. The second section does not contain a separate consideration for a Statute of Limitations, instead, it only applies if the first section has been satisfied.

By applying the facts to IC 6-8.1-9-1, the taxpayer is not entitled to a refund for the tax period because the Statute of Limitations had already expired by the time the Claim for Refund was submitted. The second section does not apply to the taxpayer because the first section of the statute was not satisfied. The Department was correct in its treatment of the Claim for Refund.

FINDING

The taxpayer's protest is respectfully denied. The taxpayer is not entitled to a refund.